



California Fair Political Practices Commission

August 20, 1987

Ronald J. Einboden
City Attorney
City of Covina
c/o Oliver, Stoeber, Barr & Einboden
1000 Sunset Blvd.
Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-87-193

Dear Mr. Einboden:

You have written requesting advice on behalf of the City of Covina Finance Director, Stanley McCartney. This letter confirms telephone advice provided to you previously.

QUESTION

Is Mr. McCartney required to disclose ownership of one share of Covina Irrigating Company stock which he has been given by the city in order to qualify as one of the directors of Covina Irrigating Company? Does ownership of this stock give rise to potential conflict of interest disqualification for Mr. McCartney in his role as city finance director?

CONCLUSION

Because of the unique circumstances surrounding Mr. McCartney's ownership of the share of stock given to him by the city, the ownership does not give rise to disqualification obligations. This conclusion is based upon the unique facts of this matter and would not apply to other situations. In addition, because Covina Irrigating Company is a non-profit mutual water company and is, therefore, not a business entity, the share is not an "investment" and no disclosure is required.

FACTS

Mr. McCartney is Finance Director for the City of Covina. He has been selected by the city to serve as one of its representatives on the board of directors of the Covina Irrigating Company ("CIC"). The city receives its municipal water from CIC and owns 4100 shares of CIC stock. Consequently, the city is able to exercise its shareholder votes to elect several directors to represent the city's interests.

The CIC by-laws require that in order for a person to be eligible to serve on the board of directors of CIC, the person must be a shareholder of CIC. Since Mr. McCartney did not personally own any CIC stock, the city has given him one of its shares. The share is "owned" by Mr. McCartney pursuant to an agreement with the city that requires return to the city if he ceases to be a CIC director or upon written demand by the city. He may not transfer or encumber the share. The water entitlement which the share represents has been signed over to the city, which also has custody of the share certificate.

Mr. McCartney paid nothing for the share and cannot receive any payment for relinquishing it back to the city. His consideration in return for "ownership" of the share is his service on the city's behalf on the board of directors of CIC. He receives no compensation for this service.

We have previously written advice letters at your request regarding the city and its relationship to CIC. (No. A-86-126 and No. A-84-100.) Since those letters were written, CIC has amended its articles of incorporation to become a non-profit mutual water company. The shares issued by the company represent entitlements to shares of the water available from CIC. Generally, these shares may be transferred (or the rights leased) to others for a price. Recently, some shares have sold for more than \$1,000. This fact has triggered your questions regarding possible reporting and disqualification obligations.

ANALYSIS

The Political Reform Act (the "Act")^{1/} provides that public officials must disclose certain assets and income (Sections 87206 and 87207) and must disqualify themselves from decisions which have material financial effects on their economic interests (Sections 87100 and 87103). The types of economic interests which are subject to disclosure and which may become the subject of disqualification are specifically enumerated and defined in the Act.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Ronald J. Einboden
August 20, 1987
Page 3

For example, an official must disclose certain investments in business entities. (Section 87206.) Both the term "investment" and the term "business entity" are defined in the Act. The term "investment" includes ownership of shares of stock in a business entity. (Section 82034.) A business entity is defined as an entity operated for profit. (Section 82005.)

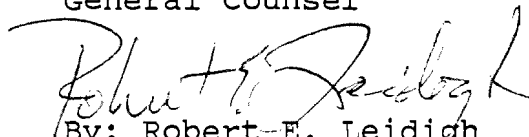
You have advised that CIC is no longer a for-profit entity; it is now organized as a nonprofit entity. Therefore, ownership of a share of CIC stock cannot constitute an "investment" within the meaning of the Act. Consequently, neither reporting nor disqualification could be required on that basis.

We note, however, that Section 87103 also requires an official's disqualification from decisions which would materially affect him. For example, if Mr. McCartney owned CIC stock outright, he would be required to disqualify himself from any decisions as city finance director which would have a reasonably foreseeable effect upon the value of his share(s). While not an "investment," the stock would still be an asset. If a decision would affect Mr. McCartney's assets in a manner which is both material and distinguishable from the effect on the public generally, his disqualification would be required. (Section 87103.) An effect totaling \$250 or more would be disqualifying. (Regulation 18702.1(a)(4), copy enclosed.) However, since Mr. McCartney cannot transfer or encumber the stock and must surrender the stock, without payment, on demand by the city, we conclude the stock is not really his asset. Therefore, decisions affecting CIC would not also affect Mr. McCartney.

I trust that this letter adequately responds to your question. If you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

REL:km

THOMAS W. STOEVER
WILLIAM B. BARR
RONALD J. EINBODEN
CHARLES S. VOSE
ROGER W. SPRINGER

LAW OFFICES
OLIVER, STOEVER, BARR & EINBODEN

A PROFESSIONAL CORPORATION
1000 SUNSET BOULEVARD
LOS ANGELES, CALIFORNIA 90012
(213) 250-3043

OF COUNSEL:
NORMAN G. OLIVER

July 13, 9 43 AM '87
July 7, 1987

Robert E. Leidigh, Counsel
Legal Division
State of California
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Request for Advice Letter -
Covina Irrigating Company

Dear Mr. Leidigh:

I am requesting an advice letter on behalf of the City of Covina Finance Director, Mr. Stanley McCartney.

Mr. McCartney is currently a director of the Covina Irrigating Company, a non-profit mutual water company.

According to the By-laws of the Covina Irrigating Company, its directors must be the owners of at least one share of stock.

In order to qualify Mr. McCartney to be a director, the City of Covina transferred ownership of one of its shares of stock to Mr. McCartney. Mr. McCartney receives no income by virtue of his ownership of this share of stock. The stock certificate is physically held by the City Clerk of the City of Covina.

Mr. McCartney cannot transfer, encumber or dispose of the stock certificate or any interest therein and must relinquish it to the City of Covina upon ceasing to be a director of Covina Irrigating Company or upon request in writing from the City of Covina. The terms of Mr. McCartney's ownership of this one share of stock are reflected in the agreement between Mr. McCartney and the

Robert E. Leidigh, Counsel
Page 2.

City of Covina, a true and correct copy of which is attached hereto as Exhibit A.

When this transfer to Mr. McCartney was effected, it did not appear that the value of a single share of stock was \$1,000 or more. However, we have become aware that shares of stock of Covina Irrigating Company have recently sold for in excess of \$1,000.

Given this recent information, must Mr. McCartney report on his Form 730 this ownership of one share of stock as an investment?

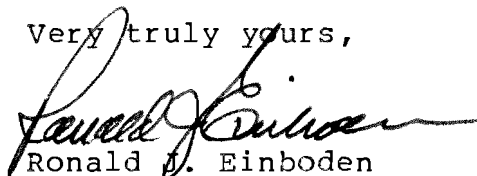
Next, the question arises whether Mr. McCartney will be disqualified from participating in a decision affecting the Covina Irrigating Company by virtue of his nominal ownership of one share of stock?

We have previously provided you with documentation concerning the organization and operation of Covina Irrigating Company and you have rendered advice letters in numbers A-86-126 and A-84-100 on related matters.

Because the Form 730 must be completed and filed on or before July 31, 1987, it would be very helpful if we could have your response prior to that date.

Please feel free to contact me should you require anything further in connection with this request for an advice letter.

Very truly yours,



Ronald D. Einboden
of OLIVER, STOEVEY, BARR & EINBODEN

RJE:jo

Attachment

cc: John R. Thomson, City Manager

Stanley McCartney, Finance Director

AGREEMENT BETWEEN Stan McCartney
AND CITY OF COVINA RE: TRANSFER OF
OWNERSHIP OF ONE SHARE OF STOCK OF
COVINA IRRIGATING COMPANY.

AGREEMENT entered into this 15th day of
September, 1986, between Stan McCartney
(hereinafter "PURCHASER") and CITY OF COVINA
(hereinafter "CITY").

WHEREAS, CITY is the owner of approximately 4100
shares of stock in Covina Irrigating Company
(hereinafter "CIC"); and

WHEREAS, CITY has designated PURCHASER to
represent its interest on the Board of Directors of
CIC; and

PURCHASER has been or will be elected to the CIC
Board of Directors; and

WHEREAS, the Bylaws of CIC require that a member
of its Board Directors own at least one share of stock.

NOW, THEREFORE, FOR GOOD AND VALUABLE
CONSIDERATION, the parties hereby agree as follows:

1. CITY agrees to transfer ownership of one
share of CIC stock to PURCHASER.
2. CITY agrees to pay all stock assessments and

transfer fees for said share of stock.

3. PURCHASER's stock certificate shall at all times remain in the physical possession of CITY's City Clerk.

4. PURCHASER shall not transfer, encumber, or dispose of the stock certificate, or any interest therein.

5. PURCHASER transfers to CITY all right, title and interest in said stock certificate, upon the occurrence of any of the following:

A. PURCHASER ceases to be a Director of CIC;

or

B. CITY requests in writing the transfer of the stock certificate.

B. PURCHASER agrees that CITY shall, at all times, without notice to PURCHASER, have the right to cause the transfer to CITY of the stock certificate and to cause CIC to change its records of ownership accordingly.

CITY OF COVINA

By _____

Mayor

PURCHASER

Stan McCartney
Stan McCartney



California Fair Political Practices Commission

July 14, 1987

Ronald J. Einboden
Oliver, Stoeve, Barr & Einboden
1000 Sunset Boulevard
Los Angeles, CA 90012

Re: 87-193

Dear Mr. Einboden:

Your letter requesting advice under the Political Reform Act was received on July 13, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:jaj

FPPC TRANSMITTAL OF CORRESPONDENCE

CORRESPONDENT: Ronald Einboden ADVICE #: 87-¹⁹³~~192~~

for Stanley McCortney, General Finance Director

RE: reporting 7 1/2 - stock

DATE REC'D: 10/13 DATE DUE: 8/13

<input type="checkbox"/> LEGAL	<input type="checkbox"/> ENFORCEMENT	<input type="checkbox"/> TA&A
<input type="checkbox"/> DIANE		
<input checked="" type="checkbox"/> BOB L.		
<input type="checkbox"/> KATHY		
<input type="checkbox"/> JOHN Mc		
<input type="checkbox"/> JEANETTE		

☐ REQUEST ADD'L INFO: DATE SENT: _____

☐ ACKNOWLEDGMENT: DATE SENT: _____

☐ REQUEST SEI

☐ CC to: _____